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November 30, 1993

**BY HAND DELIVERY**

William F. Caton  
Acting Secretary  
Federal Communications Commission  
1919 M Street, N.W., Room 222  
Washington, DC 20554

RE: PP Docket No. 93-253

Dear Mr. Caton:

Transmitted herewith for filing with the Commission on behalf of Loral Qualcomm Satellite Services, Inc. are an original and four copies of its "Reply Comments" in the above-referenced rulemaking proceeding. These Reply Comments are being filed today pursuant to the Commission's grant of an extension of time for filing reply comments in Report No. DA 93-1426 (released November 23, 1993).

Should there be any questions regarding this matter, please communicate with this office.

Very truly yours,

*William D. Wallace*  
William D. Wallace

Enclosures

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Before The  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554

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In the Matter of )  
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Implementation of )  
Section 309(j) of the )  
Communications Act )  
Competitive Bidding )  
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PP Docket No. 93-253

RECEIVED

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To: The Commission

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

REPLY COMMENTS OF  
LORAL QUALCOMM SATELLITE SERVICES, INC.

Loral Qualcomm Satellite Services, Inc. ("LQSS") hereby submits its reply comments in response to comments on the Commission's Notice of Proposed Rule Making, FCC 93-455 (released October 12, 1993) ("Notice") to establish rules for award of certain radiofrequency licenses by auction under authority of the Omnibus Budget Reconciliation Act of 1993, Pub. L. 103-66, Title VI, § 6002, 107 Stat. 312, 387-97 (Aug. 10, 1993) ("the Act") (codified at 47 U.S.C. § 309(j)). As an applicant for a license to construct an MSS/RDSS system, LQSS filed initial comments noting that competitive bidding (or a lottery) should not be used to award licenses for the MSS/RDSS frequencies. See Notice, ¶¶ 154-55.

LQSS pointed out in its initial comments that the Act itself and its legislative history indicate that the Commission should not award MSS/RDSS licenses by auction (or lottery). Moreover, LQSS outlined substantial public interest reasons why auctions should not be used for licensing MSS/RDSS systems. The reasons cited by LQSS for not subjecting the MSS/RDSS spectrum to auction

were echoed in comments submitted by other entities interested in the MSS/RDSS frequencies and familiar with the Commission's existing proceedings seeking to establish rules for this service. These comments reiterate the overwhelming statutory, public interest, practical and other bases justifying why the Commission should not use competitive bidding (or lotteries) to award MSS/RDSS licenses. And, it should be noted, Rep. John D. Dingell (D., Mich.), Chairman of the House Committee on Energy and Commerce, has stated that "the Commission has an obligation to attempt to avoid mutually exclusivity among qualified applicants in the Big LEO proceeding" in light of the language of the Act and its legislative history. Letter to The Honorable James H. Quello, at 3 (Nov. 16, 1993).

I. THE COMMENTERS AGREE THAT THE ACT DOES NOT REQUIRE COMPETITIVE BIDDING FOR MSS/RDSS LICENSES.

The commenting parties pointed to several reasons why it would be inconsistent with the basic criteria set forth in the Act for the Commission to award licenses for MSS/RDSS by competitive bidding.<sup>1/</sup> First, the applications on file from proposed low-earth orbit (LEO) MSS/RDSS systems should not be found mutually exclusive. As the commenters (and Congressman Dingell, see Letter to The Honorable James H. Quello, at 3) note, the Commission has been presented with several spectrum-sharing plans which would allow all qualified applicants to receive MSS/RDSS licenses. See

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<sup>1/</sup> In addition, specific reasons for not using a lottery to award MSS/RDSS licenses are described in the Comments of TRW, Inc., at 20-22.

Comments of Motorola Satellite Communications, Inc., at 5-6; Comments of TRW, Inc., at 7-8; LOSS Comments, at 2-4; see also Comments of AMSC Subsidiary Corporation, at 4 (acceptance of a spectrum sharing plan by all applicants is likely). "Section 309(j) only permits auctions if mutual exclusivity exists among applications that have been accepted for filing." Notice, ¶ 22 (emphasis supplied); see 47 U.S.C. § 309(j)(1). The commenters agree that the essential statutory requirement of mutual exclusivity could not be met if a spectrum-sharing plan is adopted, and, therefore, MSS/RDSS licenses should not be subject to competitive bidding.<sup>2/</sup>

The commenters also agree with LOSS that the Act's legislative history indicates that competitive bidding should not and need not be used. See Motorola SatCom Comments, at 6-8; TRW Comments, at 9-10; Comments of COMSAT Corporation, at 6-8; LOSS Comments, at 4. Congress directed the Commission to use spectrum-sharing plans to avoid mutual exclusivity for licenses in services such as MSS/RDSS. In the Act itself, Congress noted that the Commission was not required to use competitive bidding where there are engineering solutions, or other criteria, available to avoid mutual exclusivity. See 47 U.S.C. § 309(j)(6)(E). Moreover, Congress singled out the "Big LEO" proceeding as one where such an engineering solution is appropriate. See H.R. Rep. No. 103-111, 103d Cong., 1st Sess., at 258-59 (1993), reprinted in 1993

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<sup>2/</sup> Moreover, as noted below, the Commission has not adopted rules to apply to this service, and therefore, no conclusion with respect to this (or other) statutory criteria could now be made.

U.S.C.C.A.N. 378, 585-86 (encouraging Commission to avoid mutually exclusive situations, and noting "Big LEO" proceeding as a "case in point").

This reading of the legislative history was confirmed recently by Congressman John Dingell in his letter to Chairman Quello. Referring to Section 309(j)(6)(E), Congressman Dingell stated that "Congress clearly had the Big LEO proceeding in mind when it added this language to the bill because it believed that mutual exclusivity could be avoided in that proceeding." Letter to Chairman James H. Quello, at 3 (Nov. 16, 1993). The Commission, therefore, should not, and is not required to, establish an auction for the MSS/RDSS spectrum.

In any event, because rules applicable to MSS/RDSS service have not yet been adopted, it is premature to decide to use competitive bidding to assign licenses to the pending applicants. See, e.g., TRW Comments, at 4-6. The Act requires the Commission to establish auctions, if at all, "consistent with the public interest, convenience, and necessity, the purposes of this Act, and the characteristics of the proposed service." 47 U.S.C. § 309(j)(4)(C). The Commission has not determined the "characteristics" of this service, and it must do so, under the Act, before it could apply competitive bidding to award of MSS/RDSS licenses.<sup>3/</sup>

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<sup>3/</sup> If the Commission decides to license MSS/RDSS by auction, LQSS reserves the right to file supplemental comments on the appropriate auction form based upon the "characteristics of the service."

In addition, in considering whether auctions are applicable to MSS/RDSS service, the Commission must take into account that MSS/RDSS is substantially different from the Commission's new "Personal Communications Service." See TRW Comments, at 10-14. While PCS is a primarily local service, MSS/RDSS is inherently nationwide and, indeed, global. Furthermore, MSS/RDSS applicants would not necessarily be assigned limited, discrete blocks of spectrum (as is contemplated for PCS), but rather be required to share the MSS/RDSS frequencies in whole or in part. International coordination of spectrum is required for MSS/RDSS, but not for PCS. These differences affect the value of the spectrum as well as the appropriateness of the strategies for bidding on it. Thus, while PCS may appear relatively well-suited for licensing by auction, MSS/RDSS involves many variables and complications which make it a poor choice for licensing through competitive bidding.

Furthermore, the objectives of the Act would not be fulfilled by use of auctions for assigning MSS/RDSS frequencies. See LOSS Comments, at 7-9; Motorola SatCom Comments, at 8-12. As noted in these comments, auctions for MSS/RDSS licenses would delay service to the public, increase the costs of service, deter competition, and impair efficient use of the spectrum -- all contrary to the Congressional mandates in the Act. See 47 U.S.C. § 309(j)(3). Because use of competitive bidding would fail to meet the criteria and objectives of the Act, it must and should be rejected in the MSS/RDSS proceeding.

II. THE COMMENTING PARTIES CONFIRMED THAT THERE WOULD BE SUBSTANTIAL ADVERSE IMPACTS ON INTERNATIONAL MSS IF MSS/RDSS LICENSES WERE AWARDED BY COMPETITIVE BIDDING.

The commenting parties agree with LQSS that use of auctions for award of MSS/RDSS licenses would severely impair the ability of MSS/RDSS operators to implement international mobile satellite services. First, as Motorola and TRW also pointed out, if there were an auction, system costs would rise significantly because it is likely that other administrations would follow the lead of the Commission and require auctions or other types of payments for use of MSS/RDSS spectrum. See Motorola SatCom Comments, at 13-14; TRW Comments, at 19-20; LQSS Comments, at 5-6. These concerns were also raised by COMSAT, the United States signatory for INTELSAT and INMARSAT. COMSAT Comments, at 4-5.

Second, because MSS/RDSS licensees would be required to coordinate spectrum usage with other countries, it would be difficult to determine the utility of the MSS/RDSS spectrum before such coordination. As a result, it may be impossible to determine a "market value" for the spectrum prior to coordination. See AMSC Comments, at 3. The coordination requirement for international satellite services thus makes MSS/RDSS spectrum a particularly and uniquely poor candidate for competitive bidding.

Third, as COMSAT points out, use of auctions could adversely impact the competitive posture of the domestic Big LEO applicants. COMSAT Comments, at 4-5; see also Motorola SatCom Comments, at 12-13. As the result of a domestic auction, United States licensees may be required to pay greater up-front costs to establish a system than would a foreign system, which may receive spectrum

assignment without an auction. Such increased costs may also result from the use of auctions by other countries as new forms of "trade barriers to restrict foreign participation in domestic systems." COMSAT Comments, at 5.

These adverse effects would place United States licensees at a significant competitive disadvantage vis a vis MSS systems being proposed by other administrations. For example, COMSAT itself suggests that INTELSAT and/or INMARSAT may attempt to provide a competing international MSS service without participation in the United States auction thereby placing the Big LEO applicants at a competitive disadvantage in the global marketplace.<sup>4/</sup> See COMSAT Comments, at 3-4.

The problems arising from these international concerns -- increased operating costs, loss of spectrum value through the coordination process, and competitive disadvantages -- should be sufficient to find use of auctions not in the public interest for MSS/RDSS licenses. Indeed, as LQSS pointed out in its Comments, at 6, Chairman Quello recognized that the MSS/RDSS spectrum is inappropriate for auctions for these same reasons. See Letter of Chairman James H. Quello to Members of Congress (June 23, 1993).

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<sup>4/</sup> While COMSAT has pointed to a number of sound reasons why spectrum auctions should not be applied to the MSS/RDSS applicants, it has also claimed exempt status from any competitive bidding procedure for its own use of MSS spectrum apparently within U.S. borders, based on its "jurisdictional role as U.S. Signatory to INTELSAT and INMARSAT." See COMSAT Comments, at 3-4. Two reasons why COMSAT might not be required to participate in an auction in the United States are that neither INTELSAT nor INMARSAT -- and consequently COMSAT -- must necessarily be authorized to provide a competing MSS service within the borders of the United States, nor have any of these entities such an application on file. See 47 U.S.C. § 309(j)(1).



Were auctions nonetheless adopted, the detrimental effects on the public could include increased rates, decreased competition, and delayed initiation of service. For all of these reasons, the Commission should not award licenses for these inherently international services by auction.

### III. AUCTIONS SHOULD NOT BE USED FOR MSS/RDSS FEEDERLINKS.

Many arguments asserted by commenters for not using auctions to license intermediate links for PCS services (see Notice, ¶ 29) also apply to feederlinks for mobile satellite services. See, e.g., Comments of BellSouth Corporation, et al., at 45-46. First, the MSS/RDSS applicants are not all seeking to use the same sets of feederlinks. See TRW Comments, at 23-25. Where there is overlap, these frequencies could be subject to a coordination procedure or may be shared. Therefore, mutual exclusivity, as required for auctions under Section 309(j)(1) of the Act, can be avoided for feederlinks.

Moreover, there is a question whether feederlinks, like intermediate links, would fulfill the eligible use criterion of Section 309(j)(2). As Congressman Dingell has pointed out, this section requires that spectrum subject to auction be used to receive or to transmit "directly" subscriber communications. Letter to The Honorable James H. Quello, at 1-2 (Nov. 16, 1993). MSS subscribers do not receive or transmit directly on MSS feederlinks, and so, this spectrum does not appear to qualify for bidding under Section 309(j)(2).

In addition, the same concerns regarding the ability of the United States LEO systems to compete in the international marketplace would be implicated by use of competitive bidding for feederlink spectrum. See, e.g., LOSS Comments, at 5-7. Accordingly, the Commission should not license MSS feederlinks by auction. An authorization to use the MSS/RDSS frequencies should include authorized feederlink spectrum as well.<sup>5/</sup>

IV. IF COMPETITIVE BIDDING WERE USED FOR MSS/RDSS LICENSES, THE COMMISSION SHOULD NOT ALLOW BIDDING BY CONSORTIA OF APPLICANTS WHICH SEEK MULTIPLE INDIVIDUAL LICENSES (RATHER THAN A SINGLE LICENSE).

If the Commission were to award MSS/RDSS licenses by auction, it should reject the "bidding consortia" proposed in the comments of TRW. See TRW Comments, at 29-30. While TRW's suggestion is not entirely clear, the proposal appears to contemplate independent and competing applicants bidding together for a single block of spectrum and then dividing it, at will, so each would receive a license.

Based on the skeletal outline in TRW's comments, awarding licenses to applicant-members of such a bidding consortium appears contrary to the Communications Act because the members of such a proposed consortium would decide how to use spectrum awarded to the consortium, dividing a market or the spectrum according to the members' interest. Ceding such authority to licensees would be contrary to the Commission's responsibility under the Communications Act to allocate spectrum and award licenses for its

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<sup>5/</sup> Second-generation MSS/RDSS frequencies should be assigned to operational systems without competitive bidding.

use. See 47 U.S.C. §§ 301, 303(c); Wireless Cable Order, 5 FCC Rcd 6410, 6416 (1990), modified on recon., 6 FCC Rcd 6764 (1991). As currently set forth, TRW's proposal for "bidding consortia" appears contrary to the Communications Act and the public interest, and should be rejected.

V. CONCLUSION.

For the reasons outlined above and those in its initial comments, LQSS recommends that the Commission not use competitive bidding to award authorizations for the MSS/RDSS service, feederlink frequencies for MSS/RDSS systems, or second-generation user frequencies for such systems.

Respectfully submitted,

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Date: November 30, 1993

**CERTIFICATE OF SERVICE**

I, William D. Wallace, hereby certify that I have on this 30th day of November 1993, caused copies of the foregoing "Reply Comments of Loral Qualcomm Satellite Services, Inc." to be served by hand-delivery (as indicated with \*) or by U.S. mail, postage-prepaid, to the following:

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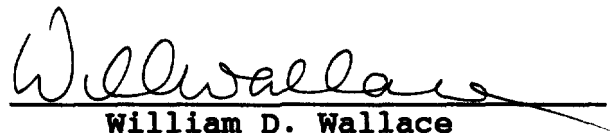
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